The Commonwealth of Massachusetts

CONSUMERS' COUNCIL

CREDIT BUREAU STUDY

Resolves of 1968 - Chapter 26

JOHN A. VOLPE

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Publication No. 515, approved by Alfred C. Holland
State Purchasing Agent

AUTHORITY FOR STUDY

RESOLVES OF 1968, CHAPTER 26.

RESOLVE PROVIDING FOR AN INVESTIGATION AND STUDY BY THE CONSUMERS' COUNCIL RELATIVE TO THE PROCEDURES USED BY LOCAL CREDIT BUREAUS.

RESOLVED. That the consumers' council is hereby authorized and directed to make an investigation and study relative to the procedures used by local credit bureaus. Said council shall report to the general court and results of its investigation and study, and its recommendations, if any, together with drafts of legislation necessary to carry such recommendations into effect, by filing the same with the clerk of the house of representatives on or before the first Wednesday of November, nineteen hundred and sixty-eight.

Approved April 25, 1968.

DR. EDWARD R. WILLETT
CHAIRMAN

DERMOT P. SHEA
EXECUTIVE SECRETARY

The Commonwealth of Massachusetts
Consumers' Council

State Office Building, Government Center
100 Cambridge Street, Boston 02202

October 31, 1968

Hon. William C. Maiers
Clerk
House of Representatives
State House
Boston, Massachusetts

Dear Mr. Maiers:

In accordance with provisions of Chapter 26 of the Resolves of 1968, the Consumers' Council hereby files its report on the Credit Bureau Study together with the draft of legislation necessary to carry its recommendations into effect.

Sincerely yours,

Edward R. Willett

Dr. Edward R. Willett
Chairman

ERW:ph
Enc.

Dermot P. Shea
Executive Secretary

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(The Members of the Council serve without compensation).

FOREWORD

This study was approached from the viewpoint of the impact of credit bureaus on the welfare of the consumers as well as the value as such bureaus to the credit grantors. The public and the industry were given a full opportunity to express their views at a Public Study Session held by the Council at the State House on October 15, 1968. The Executive Secretary has informed the Council that he has received the cooperation of the credit bureau industry particularly the Associated Credit Bureaus of Massachusetts, Inc. in connection with requests for information during the course of this study. The Council also wishes to thank the Federal Reserve Bank of Boston for the statistics in connection with consumer finance. No special funds were appropriated and the cost of this study was absorbed by the Council's regular budget.

FUNCTION OF CREDIT REPORTING

For better or for worse, consumer credit has become the plasma of the national economy. In the current socio-economic environment, credit accessibility makes the difference between "the good life" and a marginal existence. At one time the head of the household felt he was fortunate if he could obtain a mortgage to buy a home and pay off that mortgage in his life time. That was the credit status symbol of the nineteen twenties and thirties. Today, consumer credit makes available to the average citizen a wide variety of goods and services as well as mortgage money that would be unattainable by pre-World War II standards. The following figures from the Federal Reserve of Boston give an indication of the amount of consumer credit extended by financial institutions in Massachusetts:

"Consumer Loans Outstanding at Massachusetts Commercial and Mutual Savings Banks, Credit Unions and Small Loan Agencies (millions of dollars)

	Commercial & Mutual Sav. Bks.	Credit Unions	Small Loan Agencies**	Total
Dec.*1966	$1,417.	$225.	$202.	$1,844.
Dec.*1961	920.	120.	142.	1,182.
Dec.*1956	675.	66.	21.	762.
Dec.*1951	357.	31.	24.	412.

Note: This series is not equivalent to total consumer credit outstanding as it does not include data for sales finance companies or retail outlets which accounted for approximately 27% of consumer credit in 1966 in the nation.

* Data is for last day of business in December except in the case of the state-chartered credit unions when the data is for the end of June.

** Reporting requirements for the small loan agencies have changed over time so that the data are for: loans receivable, $300. or less in 1951 and 1956; loans receivable, $1,500. or less in 1961; and loans receivable, $3,000. or less in 1966. Apparently loans above the specified amount were negligible in each time period.

Sources: Board of Governors of the Federal Reserve System, "Assets and Liabilities of All Operating Banks and Trust Companies;" Commonwealth of Massachusetts, Division of Banks and Loan Agencies, Annual Reports of the Commissioner of Banks, sections relating to credit unions and to licensed small loan agencies; and U.S. Department of Health, Education and Welfare, Bureau of Federal Credit Unions, Annual Reports."

The above figures clearly demonstrate the need and importance of accurate credit reporting.

There are three major categories of credit reporting agencies in operation in Massachusetts which are discussed below: One type is the local credit bureau which is mainly used by retail merchants and financial institutions in the area of consumer credit. Originally credit bureaus were established by local credit grantors who were mainly retailers for the purpose of gathering records on their customers as to their ability to pay and also to act as debt collection agencies. Currently credit bureaus are now used by private financial institutions and governmental credit grantors as well as retail merchants. The use of these credit reports has extended to the area of employment inquiries and they also are used by government investigatory agencies (both State and Federal). Most of these bureaus are members of the Associated Credit Bureaus of Massachusetts as well as

members of the national organization, Associated Credit Bureaus, Inc. Approximately 2,100 credit bureaus in the United States hold membership in this national trade organization. According to the Associated Credit Bureaus, Inc., the individual bureaus must establish and constantly maintain a strict and rigid policy of confidentiality and ethics to qualify for membership. These bureaus in Massachusetts are independent of each other but they do exchange information with other credit bureaus throughout the United States. There is a smaller number of independent credit bureaus not affiliated with this particular group. In general, all these credit bureaus receive credit history information on the consumers from their members. None of these Massachusetts credit bureaus have been computerized as yet.

The Dun & Bradstreet type of reporting can be considered a second category. This national firm has branches throughout the United States. This firm seeks information directly from the firm or person reported on as well as from other sources. It also gives credit ratings. This firm states that it specializes in gathering information and compiling reports on business enterprises for use as basis for credit, insurance, marketing and other business decisions.

The Retail Credit Company exemplifies a third category of credit reporting operations. The Retail Credit Company, also a

nationwide concern, states that it is not a credit bureau, nor is its wholly owned subsidiary, Retailers Commercial Agency, Inc. According to the Retail Credit Company, most of their work is reporting for insurance, employment and research purposes. Retailers Commercial Agency states that it furnishes credit information, largely to mortgage loan, banking and national petroleum companies, but that it does not accumulate comprehensive files. Both companies do keep files, but state that they are destroyed on a regular basis and emphasis is on current inquiries. Both companies further state they have procedures for getting errors corrected and for keeping information confidential and that they are not computerized.

For the purpose of this study the Council has concentrated on the most commonly used credit reporting agency, the local credit bureau, as it concerns and affects the overwhelming majority of citizens of the Commonwealth. A random sampling of the following credit bureaus throughout the length and breadth of Massachusetts gives indication of the volume of credit reporting involved.

Name of Bureau	Number of Consumer Files
Credit Bureau of Greater Boston, Inc.	2,250,000
Credit Bureau of Greater Worcester	500,000
Credit Bureau of Greater Springfield	600,000
Credit Bureau of Pittsfield	62,500
Credit Bureau of Greater Lowell, Inc.	200,000
Credit Bureau of Greater Lawrence, Inc.	165,000
Credit Bureau of Greater Fall River, Inc.	165,000
Credit Bureau of New Bedford	175,000
Credit Bureau of Greater Salem, Inc.	275,000

Source: Associated Credit Bureaus of Massachusetts

These figures quoted above represent only 9 of the 28 Massachusetts Associated Credit Bureaus. It is estimated there are 60 credit reporting agencies in operation in Massachusetts.

Most of the credit bureaus also hold a debt collection license. The smaller the credit bureau the more important this phase of their operations becomes as far as a source of revenue is concerned. In many cases it would not be possible for a local credit bureau to operate without this debt collection revenue.

The members of a credit bureau are required to report to the Bureau the credit history of their customers. The members of the

Bureau have access to the files via the telephone or a written request. In order to obtain the information by phone, the members must give the Bureau their identification code. At the present time most credit bureaus will develop a personnel report as a supplementary service to its subscribers.

Due to the nature of the complaints the Council had received concerning the practices of credit bureaus, it became advisable to hold a public study session in fairness to all parties concerned. Accordingly, on September 23, 1968, it was announced that the Council would hold a public study session on the procedures and practices of credit bureaus on October 15, 1968, State House, Boston, Massachusetts. A notice of this hearing was sent to 60 credit reporting agencies in operation in Massachusetts and a general announcement was made to the public and other interested groups.

COMMENTS ON MASSACHUSETTS STATUTORY AND CASE LAW

Statutory Law: The only provision in the Massachusetts General Laws concerning credit bureaus is Section 22 of Chapter 147. This statute exempts credit bureaus from having to obtain a license as a private detective business.

Case Law: For the purposes of this study the commentary by Professor James W. Smith of Boston College Law School in connection with libel law, as it pertains to mercantile agencies, is cited. The following quotation is taken from the 1961 Annual Survey of Massachusetts Law, pages 33 - 35.

"3.3. Libel: Mercantile agencies. The action of libel has traditionally involved the strict liability concept.[1] Thus, absent a privileged communication, the diligence of the defendant in collecting, assessing, and publishing his information will not excuse him if the statement is defamatory. It is for this reason that there early evolved the concept of privileged communications. The privilege, whether absolute or conditional, is based upon social interests which require protection even at the expense of individual interests. Each case must be examined closely to determine whether the denial of a privilege will so undermine a social interest that the individual right of the person defamed must be subordinated to the greater social need.

[1] See Corrigan v. Bobbs Merrill Co., 228 N.Y.58, 126 N.E.260, 10 A.L.R. 662(1920); Prosser, Law of Torts 94(2nd ed.1955).

A type of qualified privilege generally recognized by the courts pertains to the publication of information by a person in discharge of a public or private duty, whether moral or legal. Solicitations by the person to whom the information is published is not essential to the operation of the privilege. Thus a communication made voluntarily by a person is privileged if a special relationship exists between the parties and the information is disclosed for the purpose of protecting a legitimate interest of the other person.[2] The question has continually arisen in recent years as to whether a qualified privilege may be claimed by mercantile agencies furnishing information for profit. In the United States a majority of the jurisdictions that have considered the problem have upheld the qualified privilege, principally upon the basis that these agencies perform a very useful function in an economy whose lifeblood is credit.[3] The courts take the position that without a privilege few would undertake to furnish the information so essential to a dynamic economy or, alternatively, the cost of such a service would be prohibitive. In England and in a minority of jurisdictions in the United States the privilege is not upheld in this situation. This position is grounded upon the theory that, in soliciting requests for information for their own

[2]For a discussion of this type of privilege see I Harper and James, The Law of Torts, 5.26(1956).

[3]Watwood v. Stone's Mercantile Agency, Inc. 90 U.S. App.D.C.156, 194 F2d 160, 30 A.L.R.2nd 772 (D.C. Cir. 1952), cert. denied, 344 U.S. 821(1953). See also cases collected in Annotation, 30 A.L.R. 2nd 776(1953).

profit, the mercantile agency should not be treated in a fashion similar to one who provides information because of a legal or moral duty to so do.[4] In the 1961 decision, Petition of Retailers Commercial Agency, Inc.,[5] the question was presented to the Supreme Judicial Court for the first time. In this case a subscriber of the defendant requested and received a report concerning the plaintiff, a mortgage broker. The report contained several inaccurate statements about the plaintiff, as the result of which the subscriber ceased to do business with the plaintiff. Several of these statements referred to facts which were easily susceptible of a precise check. In the trial court the plaintiff obtained a judgment and the defendant appealed. In remanding the case the Supreme Judicial Court accepted the majority view holding that reports made by a mercantile agency to an interested subscriber should be conditionally privileged. The court indicated, however, that the plaintiff need not show ill will or spite in order to destroy the privilege. The privilege would fall if the reports were made recklessly or without reasonable grounds. This latter position is consistent with a 1960 Massachusetts decision dealing with abuse of a privilege through excessive publication.[6] The

[4] MacIntosh v. Dun, (1908)A.C.390, 2 B.R.C. 203, 12 Ann. Cas. 146; Johnson v. Bradstreet Co., 77 Ga. 172, 4 Am.St.Rep.77(1886); Pacific Packing Co. v. Bradstreet Co., 25 Idaho 696,139 Pac.1007 (1914).

[5] 342 Mass. 515, 174 N.E. 2d 376(1961).

[6] Galvin v. New York, N.H. & H.R.R.,341 Mass.293, 168 N.E.2d(1960), 160 Ann.Surv. Mass. Law 3.6.

Court rejected, however, the plaintiff's contention that, with reference to mercantile agencies, the standard of reasonable care should be imposed.

Although the view which would require that the standard of reasonable care be imposed upon mercantile agencies has been advocated by many legal writers,[7] the judiciary has been less than enthusiastic about it.[8] It has, however, much merit. While there are strong arguments against holding a mercantile agency strictly liable for inaccurate reports, the question arises as to the necessity of holding such a business liable only for conduct which involves some degree of malice. Such a question is particularly pertinent in a jurisdiction which, unlike Massachusetts, requires as proof of malice a showing of ill will, spite, or willful and wanton conduct.[9] Is such a protection really as vital to the operation of a thriving economy as the courts indicate? It may be argued that a requirement of exercise of reasonable care on the part of mercantile agencies might advance rather than hinder social interests. If more accuracy is demanded of agencies holding themselves out as collectors of information, the subscriber's interest, in receiving reports upon which he may invariably rely, would be correspondingly advanced.

[7] See Hallen, Conditional Privilege in Defamation, 25 III.L.Rev. 865, 875-876(1931); 3 Restatement of Torts 595, Comment g.

[8] For an early case applying the standard of due care in an action brought against a mercantile agency, see Douglass v. Daisley, 114 Fed. 485 (D.Mass.1902).

[9] See for example, Cullum v. Dunn & Bradstreet, 228 S.C.384, 90 S.E.2d 370 (1955). For comment on the Cullum case, see 11 S.C.L.Q.256, 271(1959).

Perhaps some confusion in this area has resulted from a failure to differentiate the various types of credit agencies. Some agencies merely act as repositories of information which they make available to subscribers. Verification of the voluminous information provided to such agencies is virtually impossible. Therefore, absent a negligent communication of such information, liability should not accrue. Where, however, the agency actively investigates individuals and reports such information to its subscribers, a requirement that the agency exercise due care in its investigation and reporting would not appear too onerous."

Source: "1961 Annual Survey of Massachusetts Law", a Boston College Law School publication.

DEBT COLLECTION AGENCIES

Statutory Law: Debt collection agencies are covered by the provisions of Sections 24-28 inclusive of Chapter 93 of the General Laws. A large percentage of the credit bureaus hold collection agency licenses issued by the Commissioner of Banks under these sections of the General Laws. Section 24 of Chapter 93 also states that "the Commissioner may from time to time establish such regulations pertaining to the conduct of the business as he may deem necessary." The Commissioner of Banks has formally advised the

Consumers' Council that she intends to hold a public hearing on February 6, 1969, for the purpose of establishing regulations pertaining to the business of collection agencies.

PUBLIC STUDY SESSION

The Public Study Session was held, as announced, on October 15, 1968, at the State House in Boston. It was well attended and much information was recorded in the official transcript which is being filed with this study.

The Chairman of the Consumers' Council, Dr. Edward R. Willett, opened the hearing with the following statement:

"As announced on September 23, 1968, this public study session is being held by the Consumers' Council to consider the procedures and practices of credit bureaus and also in accordance with a credit bureau study ordered by the General Court (Chapter 26-Resolves of 1968).

I have previously stated that "It is recognized that a credit grantor needs a credit history of a customer in order to properly assess his risk and that credit bureaus are often the only central and least expensive source of such information. However, as a result of the vast volume of consumer credit reporting today, serious problems and abuses have developed resulting in reportedly unwarranted invasion of privacy of the individual citizens as well as impairment of their credit. The Council's Credit Bureau Study will concentrate on the problem areas of credit reporting."

Some of the specific issues to be considered today are as follows:

1. How to correct or eliminate false or misleading information in a credit file which impairs the credit and reputation of the consumer involved? What is the need or value of certain derogatory material in a credit file?

2. How can the confidentiality of the consumer's credit file be protected; who has access to it? For what purposes besides credit granting or employment checking is such a credit file used?

3. How can unethical debt collection practices and information gathering techniques be stopped?

Certain witnesses have been invited by the Council to testify. We have also received some requests which will be honored. All other persons wishing to testify should give their name and address to one of the staff members. This is not a public hearing and the Chairman reserves the right to determine the pertinency of any testimony being offered."

FINDINGS

The Consumers' Council, in its meeting of October 31, made the following findings and recommendations:

1) Unethical Debt Collection Practices.

(a) Since the Banking Commissioner has called a public hearing for the purpose of establishing regulations pertaining to the conduct of the business of collection agencies under Section 24 of Chapter 93, no legislation in this regard is necessary. The Commissioner of Banks has invited the Council to submit its recommendations which will be done at a later date.

(b) Since many credit bureaus are dependent on the revenue of their debt collection business, it would be uneconomic to bar the credit bureaus from the debt collection business. Furthermore, the same record of a debtor would appear in a credit bureau record even if it were not in the debt collection business.

2) While the credit bureaus report that they do permit the consumer to check his own credit record file in the event he is denied credit, the Council feels that this should be made mandatory and without charge. Accordingly, this finding is incorporated in Section 2 of its Legislative Recommendation.

3) Outdated derogatory information.

The Council is concerned about the use of outdated information that fundamentally has no bearing on the current credit

standing of a consumer. Accordingly, the Council voted to incorporate in its Legislative Recommendation a provision barring information concerning transactions which occurred more than seven years prior to the date on which a credit report is given.

4) The Council is concerned about the use of credit bureau files as an employment check. It feels that the employee or an applicant for employment should be supplied with a copy of any such report to the employer or prospective employer. This provision is, therefore, incorporated in Section 4 of the Legislative Recommendation.

5) The Council voted that noncompliance with these provisions would constitute unfair trade practices under Section 2A,*Chapter 93A, of the General Laws. This is covered under Section 5 of the Council's Legislative Recommendation.

The Council is continuing its discussion with the credit bureau industry, particularly with the Associated Credit Bureaus of Massachusetts. The Council may have further recommendations to make at a later date.

*Chapter 93A of the General Laws is designated as the "Regulation of Business Practice and Consumer Protection Act." This act, sponsored by the Council, was passed by the General Court in 1967. It is based in part of a model federal trade law for states. Section 2. (a) of this act is as follows: "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

LEGISLATIVE RECOMMENDATION

AN ACT REGULATING THE TRADE PRACTICES OF CREDIT BUREAUS AND SUBSCRIBERS THERETO.

Chapter 93 of the General Laws is hereby amended by adding after Chapter 93A the following Chapter 93B:

Section 1. Definitions.

"Consumer," a natural person seeking or obtaining credit for personal family or household purposes.

"Credit," the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

"Credit bureau," any person who engages in the business of making credit reports.

"Credit grantor," any person engaged in whole or in part in the business of extending or arranging for the extension of credit, whether in connection with loans, sales of property or services or otherwise.

"Credit report," any written or oral report, recommendation, or representation as to the credit record, standing or capacity of any consumer, and includes any information which is given as the basis for a judgment as to any of the foregoing factors.

Section 2.

(A) A credit grantor shall inform a consumer that credit is denied because of a report from a credit bureau if that is all or

part of the reason for such denial and shall supply the name and address of the credit bureau making the report. If the consumer so requests. the fact of such denial and the name and address of the credit bureau shall be given in writing to the consumer.

(B) A credit bureau shall, without charge, disclose to a consumer who has been denied credit or a person who has been denied employment on the basis of a credit report, the contents and sources of that report. The consumer may submit a statement or any clarifying data to the credit bureau for inclusion in the credit record if he believes it contains inaccurate or incomplete information. The credit bureau shall re-examine that part of the record to which the statement pertains and make any appropriate changes therein.

Section 3. Outdated information.

A credit bureau shall not report information concerning transactions which occurred more than seven years prior to the date on which a credit report is given.

Section 4. Information to employers or prospective employers.

A credit bureau which supplies a credit report to an employer or prospective employer, with reference to an employee or an applicant for employment shall supply a copy of the report to the employee or applicant at his address as it appears in the report.

Section 5. Noncompliance.

Noncompliance with this Chapter shall constitute an unfair trade practice under the provisions of Section 2A of Chapter 93A of the General Laws.